

REMARKS

The Office Action of July 6, 2007 has been reviewed and the Examiner's comments carefully considered. Original claims 1-16 were previously cancelled in the present application and claims 17-37 were added via a Preliminary Amendment. Thus, claims 17-37 are currently pending in this application and claim 17 is in independent form.

35 U.S.C. §102(e) Rejections

Claims 17-19 stand rejected under 35 U.S.C. §102(e) for asserted anticipation over U.S. Patent No. 7,176,309 to Schröder et al. (hereinafter, "the '309 patent"). However, the '309 patent is an improper 102(e) reference. In order for such a reference to qualify as prior art under 35 U.S.C. §102(e), the International Application must designate the United States and have been published in English (see MPEP §706.02(f)(1)). Although the '309 patent is a U.S. patent arising from a PCT application filed on or after November 29, 2000, the International Application was not published under PCT Article 21(2) in English. Therefore, the '309 patent may be applied as prior art under 35 U.S.C. §§102(a) or (b) as of its publication date (June 5, 2003), but it does not qualify as prior art under 35 U.S.C. §102(e) (see MPEP §706.02(f)(1), Example 5). Thus, the '309 patent should be removed as an improper 102(e) reference. However, Applicants recognize that this formality does not eliminate this reference entirely, as addressed below.

The PCT application corresponding to the '309 patent published as WO 03/045927 (hereinafter, "the PCT publication") on June 5, 2003. The earliest priority date of the present application is June 12, 2003, seven days later than the publication date of the PCT publication. Thus, the PCT application could be considered a 35 U.S.C. §102(a) reference to the present application. However, in the accompanying Declaration Under 37 C.F.R. §1.131 and Exhibits A and B thereto, Dr. Frank Schröder, one of the named inventors of the present application, declares that the subject matter of the presently claimed invention was conceived prior to June 5, 2003, and that he proceeded diligently to seek patent protection on the overall invention from the date of conception until the filing date of the priority German Application to the present application. As averred to in his Declaration, Dr. Schröder worked with his co-inventors and German patent attorneys to prepare and file the German priority patent application directed to the subject matter of his "Notice of Invention" Report contained in Exhibits A and B. The "Notice of Invention" Report contained the claimed subject matter of the present application and was submitted to the Assignee of the

present application before June 5, 2003, the effective date of the '309 patent. Subsequently, corresponding PCT Application No. PCT/EP04/005882 was filed on June 1, 2004 directed to the subject matter of the "Notice of Invention" Report, and the present application is the corresponding U.S. National Phase application of PCT Application No. PCT/EP04/005882.

In view of the foregoing, the attached Declaration and Exhibits A and B thereto, conception of the presently claimed invention prior to the earliest effective date of the '309 patent of June 5, 2003 and due diligence from prior to June 5, 2003 to the filing date of the German priority application (constructive reduction to practice) has been established. Accordingly, the '309 patent is not prior art to the presently claimed invention and should be removed as a reference.

35 U.S.C. §103(a) Rejections

Claims 17-37 also stand rejected under 35 U.S.C. §103(a) for asserted obviousness over the '309 patent in view of WO 2004/085413 to Zhang et al. (hereinafter, "Zhang et al."). However, Zhang et al. is an improper 102(e) reference as well. Although it is a WIPO publication of a PCT application filed on or after November 29, 2000 that designated the United States, the reference was not published under PCT Article 21(2) in English. As discussed above with the '309 patent, in order for such a reference to qualify as prior art under 35 U.S.C. §102(e), the International Application must designate the United States and have been published in English (see MPEP §706.02(f)(1)). However, the International Application on which Zhang et al. is based was not published in English under PCT Article 21(2). Therefore, Zhang et al. may only be applied as prior art under 35 U.S.C. §§102(a) or (b) as of its publication date, October 7, 2004. The Zhang et al. publication date is later than the priority date of the present application, June 12, 2003. As such, Zhang et al. is not a proper prior art reference to the present application under any statutory provision and should be removed as a reference along with the '309 patent.

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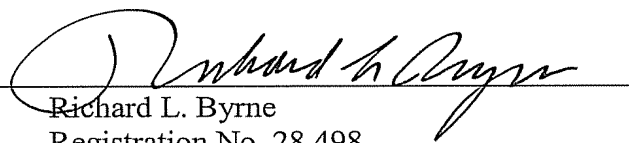
CONCLUSION

Since all of the references cited by the Examiner have been removed as prior art, claims 17-37 are believed to be in condition for allowance.

In view of the remarks contained herein, removal of the rejections and allowance of claims 17-37 are respectfully requested.

Respectfully submitted,

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